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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Implementation of Section 309(j))
of the Communications Act)
Competitive Bidding)

PP Docket No. 93-253

To: The Commission

ORIGINAL

COMMENTS

Pacific Telecom Cellular, Inc. ("PTC"), by its attorneys, and pursuant to Section 1.415 of the Federal Communications Commission's ("FCC" or "Commission") rules, hereby submits its Comments in the above-captioned proceeding.^{1/} Various subsidiaries and affiliates of PTC hold cellular system licenses in Rural Service Areas and smaller sized Metropolitan Statistical Areas.^{2/} PTC and its affiliates are also prospective applicants for licenses in the Personal Communications Services ("PCS").

Introduction

1. The NPRM initiated an expedited process by which the Commission will implement the competitive bidding authority conferred by Congress. PTC will offer comments on certain of the questions which could directly impact PTC and similar companies with special interest in the rural and smaller urban areas. The

^{1/} Notice of Proposed Rule Making, PP Docket No. 93-253, 58 FR 53489, October 15, 1993 ("NPRM").

^{2/} Cellular systems licensed to and controlled by PTC's subsidiaries and affiliates serve Rural Service Areas in Alaska, Wisconsin and Michigan, and the Appleton and Eau Claire MSAs in Wisconsin. PTC also serves as manager of several RSA cellular systems in Minnesota, Wisconsin and South Dakota. PTC is controlled by Pacific Telecom, Inc., a Washington corporation and telecommunications holding company.

issues of immediate concern to PTC are addressed in the following paragraphs.

I. Bidding for Groups of Licenses - No Combinatorial Bids for BTAs

2. The use of combinatorial bidding is viewed as a means to facilitate efficient aggregation of licenses for parties who consider the licenses to have more value as a group than individually.^{3/} The NPRM proposes a system by which sealed bids would be received from parties who desire to bid on all 51 Major Trading Area ("MTA") licenses for broadband PCS.^{4/}

3. PTC does not oppose the use of sealed combinatorial bids for groups of MTA licenses. However, it would not be surprising if only the largest corporations with substantial capital resources are able to compete successfully for the MTA licenses, either individually or in combination.

4. PTC requests that the Commission not extend the use of combinatorial bidding to the Basic Trading Area ("BTA") licenses.^{5/} If BTAs are licensed in combination with other BTAs within the same MTA, it is predictable that the greatest value would be attached to those BTAs within the MTA which encompass the major population centers. Small and mid-sized businesses who could expect to bid competitively for individual BTAs but who lack the resources to

^{3/} NPRM, para. 57 et seq.

^{4/} NPRM, para. 120. Sealed bids would be accepted for all 51 Block A licenses and all 51 Block B licenses. The sealed bids would be opened after the 51 oral auctions for Block A are completed, with the same procedure repeated for Block B.

^{5/} If the Commission ultimately adopts a combinatorial bidding system for MTAs and/or BTAs, it should not deny applicants at the oral auctions an opportunity to resume oral bidding after the sealed bids are opened.

compete for groups of BTAs would be effectively excluded from the process.^{6/}

5. Neither would combinatorial bidding for BTAs benefit the residents and businesses of the less densely populated BTAs. If the small and mid-sized bidders who are most interested in the rural BTAs are discouraged from participating because they are disadvantaged by the combinatorial bidding process, the experience of such companies who are most sharply focused on the needs of rural BTA residents and businesses would be squandered.

6. PTC submits that the Commission should not settle on a compromise involving combinatorial bidding for BTAs by allowing some BTA licenses to be acquired through combination bids and others only through oral individual bids. For example, if the Commission limited combinatorial bidding for BTAs to broadband PCS license Blocks F and G, the equivalent of national licenses could be purchased by acquiring all BTAs in all MTAs, thereby undermining the ability of small and mid-sized businesses to compete for licenses in rural BTAs. Many highly qualified parties such as PTC who will probably not qualify as "designated entities" would be foreclosed from applying for PCS Blocks C and D, and through combinatorial bidding could be effectively eliminated from other BTA license opportunities as well. Moreover, if the Commission were to allow combination bids for three PCS broadband BTA licenses

^{6/} Combinatorial bidding for license Blocks C and D could defeat the purpose of limiting eligibility for these licenses to rural telephone companies, small businesses and minorities. Large, highly capitalized companies could hold a minority interest in qualifying designated entities which use combinatorial bids to assemble a nationwide license. Other designated entities without capital to compete for numerous licenses would be hopelessly prejudiced.

(i.e. blocks E, F or G), it would provide a third opportunity to the largest and most highly capitalized corporations to acquire a nationwide license and effectively eliminate the small and mid-sized companies from the opportunity to acquire sufficient spectrum to offer a useful service in rural BTAs. Such a plan would injure both the companies who wish to apply for rural BTAs and the public who would benefit from the focus of a rural licensee's efforts to serve those areas.

II. Designated Entities

7. Under Section 309(j)(4) of the Communications Act as recently amended, the Commission is obligated to adopt rules which allow a wide variety of applicants, including rural telephone companies, small businesses and minority groups (including women), to participate in the provision of spectrum-based services. Among the issues on which the NPRM invites comments are criteria to establish a definition for each type of designated entity, and to determine what preferential treatment should be accorded to the qualifying applicants.

8. PTC anticipates that with the benefit of comments from interested parties, the Commission will adopt appropriate definitions for each group generally identified by Congress as needing preferential consideration in the competitive bidding process.

9. Regardless of the final decision on appropriate limitations for each group, PTC suggests that a qualifying party or group must certify that it controls (i.e. with least a 50.1 equity interest) the applicant for a license to be awarded by competitive bidding. If such an applicant is successful in the bidding and is

awarded a license, the Commission should prohibit transfer of control or assignment of that license to anyone except another qualifying designated entity of the same type for a period of at least five years.^{2/} Even for a sale to another qualifying entity, no sale for profit should be permitted within the initial five year license period. Such restrictions are necessary to avoid abuse of the preference benefits and unjust enrichment.

10. In the licensing of broadband PCS, the Commission proposes to set aside two blocks of spectrum for which only the designated entities may bid.^{3/} It is PTC's view that if the Commission adopts any plan which sets aside spectrum for the designated entities, there should be no preferential treatment of designated entities who elect to apply for other than the set aside spectrum. Neither should there be a limitation, other than any generally applicable cross-ownership restrictions, on the eligibility of designated entities to apply outside of the set aside spectrum.

III. Application and Bidding Process

A. Initial Application With Upfront Payment

11. **Short Form Application.** Prior to any auction, and with at least 30 days advance notice, all interested parties should

^{2/} Both narrowband and wideband PCS licensees are required to meet construction requirements beginning with the five-year anniversary of the license grant. See Sections 99.103 and 99.206 of the Commission's rules. Designated entities should be required to meet at least the first construction benchmark before sale of their interests at a profit.

^{3/} NPRM, para. 121. One block of 20 MHz (Block C) and one block of 10 MHz (Block D) would be reserved in all BTAs for bids solely from qualifying designated entities.

be invited to submit a short form application during a one-day filing window to register to participate in an auction. The short form should identify the applicant's ownership and the market and frequency block for which the applicant will bid. Any applicant claiming a designated entity status should be required to certify its eligibility qualifications on the short form. Included in the short form should be an identification of the individual who is designated to bid for the applicant, along with a front facial photograph of a specified size. An applicant should be permitted to identify and submit photographs for up to two alternate bidders. All information in the short form application, including the identity and photos of the bidding individual (as well as any alternates), should be available for public inspection.

12. **Upfront Payment.** At the time the short form application is filed, all applicants should be required to submit a check for the upfront payment. The check should be deposited by the FCC into an interest bearing account. Any dishonored checks should result in disqualification of the applicant. The amount of the required upfront payment should not be left for calculation by the applicant; the Commission should publish the exact amount required in the Public Notice which announces the filing date. PTC submits that the upfront payment should not be a nominal amount, as it is one useful means to eliminate potential bidders who are financially unqualified. For the BTAs, PTC suggests that a substantial flat fee be specified for each license block, rather than a payment which varies according to the population of the area and amount of spectrum in the block. The upfront payment should be returned with interest to unsuccessful bidders, but forfeited if an

applicant who is the high bidder fails to qualify for the license. PTC submits that a requirement for additional financial qualifications showings should not be adopted for PCS applications because it is premature to estimate the costs of construction and operation of the facilities, and because there is a sufficient qualifications showing subsumed in the upfront payment and the post-auction payment requirements.

B. Deposit by Winning Bidders

13. After submitting a high bid, an applicant should be required to furnish a substantial deposit such as the 20 percent amount proposed by the Commission.^{2/} Submission of the deposit should be required promptly after the auction, but at least five business days should be allotted to facilitate interbank transfers of funds. At the time of the auction the Commission should record the identity of the second highest bidder, and the amount of the bid, in case the high bidder fails to submit a timely and sufficient deposit. In such an event the Commission should offer the second highest bidder the option to proceed at the amount of its bid. If the opportunity is declined the Commission should schedule another auction.

C. Supplemental Application for Winning Bidders

14. By not later than 15 days after Public Notice of a winning bid, an applicant should be required to supplement its application with any amendments to the initial application. For PCS applications in particular, there appears no need for a specific technical proposal. The submission of details for site

^{2/} NPRM, para. 104.

specific PCS facilities is unproductive because there is not a sufficient amount of information available to applicants about equipment pricing and performance.

D. Sequence of Bidding

15. PTC suggests that the Commission should auction all frequency blocks within a given MTA before proceeding to auction licenses in the next MTA. If possible, the blocks within a given MTA should be auctioned within the same week in order to avoid a headstart advantage to the first successful bidder.^{10/} The MTAs (including the BTAs within each MTA) should be ranked in the order of largest to smallest, by population, and auctions conducted in the same order to allow service to be introduced first in the most populated areas where public demand should stimulate the manufacture of new equipment and development of innovative services.

IV. Anti-Trafficking Restrictions Should Be Avoided Or Minimized

16. The Budget Act directed the Commission to consider anti-trafficking restrictions as one possible means to prevent unjust enrichment by auction winners.^{11/} There is particular concern over the possibility that licensees who benefit from the auction process as designated entities could be unjustly enriched through resale of their licenses.

17. PTC suggests that, absent circumstances where a designated entity has benefitted from preferential treatment

^{10/} For example, all PCS frequency blocks, in the order of A, B, C, D, E, F and G, should be auctioned on a single day, if possible, for a given MTA or BTA.

^{11/} NPRM para. 83.

allowed by the competitive bidding rules, there should be no anti-trafficking restrictions placed on the resale of a license obtained through auction.^{12/} The licensee will have paid the full market value for the rights obtained, and any subsequent sale would presumably reflect the full market value at the time. When a licensee bears the risk of its investment in a license it should not be disgorged of a profit from its resale. The public interest is sufficiently protected by rules requiring build-out of a licensee's facilities on a schedule appropriate for the service involved.^{13/}

Conclusion

18. Certainly the Commission faces a complex task in its effort to adopt equitable rules to implement the competitive bidding process. The task is rendered exceptionally difficult under the time limitations imposed by Congress.^{14/} Considering

^{12/} PTC suggested in its comments concerning the designated entities that the Commission should prohibit transfer of control or assignment of a license obtained with preferential treatment to anyone except another qualifying designated entity of the same type for a period of at least five years. See p. 5, supra.

^{13/} See, for example, the construction requirements embodied in the recently adopted Section 99.206 of the Commission's rules, applicable to broadband PCS.

^{14/} While a 210-day period of time following enactment of the Budget Act may be sufficient for adoption of competitive bidding regulations, it appears that the Commission will not have the full benefit of that time if it must adhere to a 270-day deadline (by May 7, 1994) to commence issuing licenses for PCS, considering the public notice periods that will be appropriate for PCS application acceptance and auctions. Following the PCS auctions there will likely be additional delays before licenses are issued to accommodate receipt of payment deposits from auction winners, amendments to applications, petitions permissible under Section 309 of the Communications Act, and responses by the auction winners. If petitions are filed, time of the Commission staff to prepare a decision will further delay a license grant.

all of the delays inherent in the process it would appear that the Commission should seek relief from Congress to extend the PCS licensing deadline.

19. In adopting rules to govern the competitive bidding process, PTC urges the Commission not to allow combinatorial bidding for the BTAs within each MTA. If all BTAs could be purchased with a sealed bid, the benefits from the Commission's creation of a two-sized market structure for PCS would be eviscerated. Applicants with a focus of interest on a given BTA would have no practical chance to compete under the system. The ultimate and unfortunate result would be that residents and business users in rural BTAs would not benefit fully from new communications offerings.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Loren Bradon, a secretary in the law offices of Lukas, McGowan, Nace & Gutierrez, Chartered, hereby certify that I have on this 10th day of November 1993 sent, via hand delivery, a copy of the foregoing COMMENTS to the persons named below.


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